

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF MONTANA**
3 **HELENA DIVISION**
4 **=====**

5
6 Case No. CR-07-24-H-CCL

7
8 **UNITED STATES OF AMERICA,**

9 **Plaintiff,**

10 **versus**

11 **DANIEL DIETZ,**

12 **Defendant.**

13 *****

14 **TRANSCRIPT OF PROCEEDINGS**

15 **CHANGE OF PLEA**

16 Courtroom
17 United States District Court
18 Paul G. Hatfield Courthouse
19 Helena, MT 59601
20 April 11, 2008

21 **The Honorable Charles C. Lovell, Presiding**

22 *****

23 Julie L. Sampson
24 Court Reporter
25 For The Record Reporting Services
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APPEARANCE OF COUNSEL:

For the Plaintiff:

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For the Defendant:

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Also Present:

Margaret Bentwood, Law Clerk
Darlene DeMato, Courtroom Clerk
Julie L. Sampson, Court Reporter

*For The Record Reporting Services
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PROCEEDINGS

(The proceedings began at 10:00 a.m.)

THE BAILIFF: All rise. The United States District Court in and for the District of Montana is now in session, the Honorable Charles C. Lovell presiding.

THE COURT: Be seated, please. Good morning.

MR. DONAHOE: Good morning, Your Honor.

MS. STEWART: Morning.

THE COURT: The first matter today is Criminal Cause 07-24. This is a Helena Division case, United States of America against Daniel Dietz.

You are Mr. Dietz; is that correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The record will show your presence here today; also that of your counsel, Michael Donahoe; and Ms. Paulette Stewart, Assistant United States Attorney, is here for the United States.

This is the time set down for hearing your Motion for Change of Plea, Mr. Dietz, and we

1 are ready to proceed. Will you come up to the
2 podium, please, with your counsel.

3 Mr. Dietz, as I understand it here today,
4 you are tendering pleas of guilty to both counts of
5 a two-count indictment with no plea agreement. And
6 those counts are, first of all, coercion and
7 enticement, that is a violation of Title 18, United
8 States Code Section 2422(b); and Count II is a
9 transfer of obscene materials to minors, which is a
10 violation of Title 18 of the United States Code,
11 Section 1470.

12 Now, before I can rule on your motions to
13 enter a guilty plea, it's necessary that I ask you
14 certain questions, also advise you of your rights.
15 I know Mr. Donahoe has done that already, but it's
16 necessary that I do it on the record here. Because
17 I'm going to ask you some questions, I need your
18 answers under oath, so the clerk must first
19 administer to you the oath.

20 Raise your right hand, please.

21
22 **DANIEL DIETZ,**
23 **having been first duly sworn, testified under**
24 **oath as follows:**

25 THE DEFENDANT: I do.

1 COURTROOM CLERK: Thank you.

2 THE COURT: Now, Mr. Dietz, is this your
3 correct name and is it spelled correctly?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: How old are you?

6 THE DEFENDANT: Thirty-seven.

7 THE COURT: What education have you had?

8 THE DEFENDANT: I have a high school
9 diploma and two years of college.

10 THE COURT: Where did you graduate from
11 high school?

12 THE DEFENDANT: Bethel, Pennsylvania.

13 THE COURT: Which college did you attend?

14 THE DEFENDANT: New Tribes Bible
15 Institute in Jackson, Michigan.

16 THE COURT: Is that a four-year college?

17 THE DEFENDANT: Two-year college.

18 THE COURT: Two-year college?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you receive a degree or a
21 diploma?

22 THE DEFENDANT: It's a nonaccredited
23 school, so I graduated on the Dean's list. There's
24 no diploma or degree.

25 THE COURT: I see. Have you ever been

1 treated for a mental illness or addiction?

2 THE DEFENDANT: I am undergoing a program
3 for chemical dependency, and I also have ADHD and
4 bipolar.

5 THE COURT: Tell me about the treatment,
6 if you will.

7 THE DEFENDANT: The sort of treatment,
8 actually, it was just about a three- or four-month
9 program with Boyd Andrews here in town, three days
10 a week. And after that, I had gone to Narcotics
11 Anonymous for every day, just about, since then.

12 THE COURT: All right. So you've had an
13 addiction problem. What about the mental illness?

14 THE DEFENDANT: It was at Boyd Andrews,
15 actually, that it was suggested to me to go and see
16 a doctor at Lewis and Clark at the Coop Health
17 Center, and the doctor there just did some short
18 tests on me and we decided to -- she decided to put
19 me on medication for it.

20 THE COURT: There actually was a
21 diagnosis of bipolar?

22 THE DEFENDANT: Right.

23 THE COURT: What is the medication?

24 THE DEFENDANT: I believe the Lithium --
25 I take Lithium for that.

1 THE COURT: Does that in any way affect
2 your judgment?

3 THE DEFENDANT: No, Your Honor. It
4 helps.

5 THE COURT: All right. Are you presently
6 under the influence of drugs, alcohol, medication
7 of any kind?

8 THE DEFENDANT: The Strattera and Lithium
9 that I take for the ADHD and bipolar.

10 THE COURT: All right. And that doesn't
11 in any way affect your ability to discern what is
12 going on? You're completely aware of what is
13 happening here today; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Now, you have
16 received a copy of the indictment. You've had an
17 opportunity to read it over. I take it that you
18 have discussed these charges with your attorney,
19 that you have had every opportunity to ask him
20 about the charges, also to ask him about your
21 rights; is that correct?

22 THE DEFENDANT: I have, Your Honor.

23 THE COURT: And are you fully satisfied
24 with Counsel's representation of you?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Very well. Now, you have
2 notified the Court that you wish to enter a plea of
3 guilty of each of these two counts without any plea
4 agreement. Let me ask whether the Government has
5 in any way used force, threats, intimidation to
6 secure your tender of a guilty plea?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: All right. And do you have
9 any agreement with the United States, or anyone on
10 behalf of the United States, with respect to your
11 plea of guilty?

12 THE DEFENDANT: I'm not sure I understand
13 the question.

14 THE COURT: Well, the question is whether
15 somebody has made a promise to you with respect to
16 the sentence you might receive, anybody on behalf
17 the United States? If there is any kind of an
18 agreement or offer or anything of that nature that
19 hasn't been disclosed to the Court, I must know
20 about it.

21 THE DEFENDANT: Yeah. There hasn't been,
22 Your Honor.

23 THE COURT: All right. That's the answer
24 that I was interested in. Now, you do understand
25 that these are felony crimes, I take it?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And you understand that there
3 are certain consequences to a conviction of felony
4 crimes, in addition to the criminal sanctions
5 involved?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: In other words, I'm talking
8 about loss of certain civil rights, such as a right
9 to vote, serve on a jury, possess a firearm, that
10 sort of thing? You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, then, we
13 look to the essential elements of proof here, and
14 by that I mean the minimum elements that are
15 required to be proven by the United States beyond a
16 reasonable doubt in order to convict you of this
17 crime. And as to Count I, the coercion and
18 enticement count, those essential elements are
19 these: First of all, that you utilized the mail or
20 any facility or means of interstate or foreign
21 commerce; secondly, to knowingly persuade, induce,
22 entice, or coerce; third, an individual who had not
23 attained the age of 18 and whom the Defendant
24 believed had not attained the age of 18; and
25 fourthly, to engage in sexual activity for which

1 any person can be charged with a criminal offense,
2 or took a substantial step toward doing so.

3 Now, those are the essential elements
4 which must be proven beyond a reasonable doubt by
5 the United States in order to convict you as to
6 Count I. The proof must be beyond a reasonable
7 doubt. Do you understand all of that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Then as to Count
10 II, this is the transfer of obscene materials to
11 minors. In order for you to be found guilty of
12 Count II, the United States must prove these
13 elements beyond a reasonable doubt: First of all,
14 that you used the mail or any facility of
15 interstate or foreign commerce; secondly, to
16 knowingly -- knowingly transfer obscene material;
17 and thirdly, to an individual who you knew at the
18 time was under the age of 16 years. That's what
19 the Government has to prove beyond a reasonable
20 doubt to convict you of this crime charged in Count
21 II. Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: With respect to the
24 forfeiture allegation, the Government must prove
25 that certain property or proceeds were used to

1 facilitate the commission of the offenses, that is
2 that are charged in Counts I and II, and here we
3 are talking about a Toshiba notebook computer, the
4 model number and serial numbers of which are set
5 forth in the papers, one, a Toshiba. Apparently,
6 then, an IBM ThinkPad. Yes.

7 Now, the Government has to prove that in
8 order to forfeit those materials. You understand
9 that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Then turning to
12 the penalties, as I read the indictment and looked
13 at the statute, Count I carries a mandatory minimum
14 sentence of ten years imprisonment and a maximum
15 term of imprisonment of life, a fine not to exceed
16 \$250,000, or both imprisonment and fine. Count II
17 has no minimum that is mandatory, but does carry a
18 maximum term of ten years incarceration and a fine
19 of not to exceed \$250,000. Count I, I take it, is
20 a Class B felony. Count II is a Class C felony.

21 As to supervised release, there is a
22 mandatory minimum term of five years, as to Count
23 I, and a maximum of lifetime supervision, but no
24 minimum as to Count II, and a maximum term of three
25 years. I'm talking about supervised release

1 following a term of incarceration. Do you
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. And is that what
5 you have been advised by Counsel that are the
6 maximum and minimum penalties here?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Then, I want to
9 say a few words about supervised release. It is,
10 of course, supervision while on release status.
11 The period occurs, of course, after release from
12 incarceration. The conditions of that supervised
13 release are imposed by the Court as part of the
14 sentencing judgment. And I think the significant
15 thing about that is that in the event of a
16 violation of those conditions, you may again be
17 incarcerated and for the term of supervised release
18 or even longer, depending on a number of factors.
19 But if you violate a term, you may go back to
20 prison again, and that prison term is cumulative to
21 and in addition to the other terms that we are
22 talking about. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Then, with
25 respect to the Sentencing Guidelines, I gather that

1 Mr. Donahoe has discussed these with you and
2 explained to you that the Sentencing Guidelines
3 have been created to help judges impose reasonable
4 sentences in cases such as yours. They do not
5 impact the mandatory minimum sentence required by
6 Congress, of course. But beyond that, they are
7 advisory only, and the Court's obligation is to
8 impose a reasonable sentence under the law and the
9 sentencing factors specifically set forth in
10 Section 3553. The guideline range under the
11 Guidelines will be computed in your case. We won't
12 know what that guideline range is until after the
13 investigation by the United States Probation Office
14 and preparation of a presentence report which sets
15 forth those findings.

16 Now, even after the guideline
17 determination -- of course, as I indicated in the
18 first instance, the Court views that as advisory
19 only, and there may be a departure from that
20 guideline or the imposition of a different sentence
21 by the Court, either upward or downward from the
22 guideline sentence recommended by the advisory
23 Guidelines. You understand that.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: There may be an appeal by

1 either party of a Guideline sentence, but important
2 to be known by you is that in dealing with the
3 sentence, since enactment of the Guidelines, parole
4 has been abolished and whatever sentence that is
5 imposed by the Court you will very likely be
6 required to serve, less good time. Do you
7 understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Because there is no longer
10 any administrative early release that can
11 reasonably be anticipated by you. You understand
12 that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: All right. Then, I think we
15 are ready for the factual basis. Will you address
16 that, Ms. Stewart, and tell us what would your
17 evidence be in this case if we brought a jury in
18 and proceeded with trial?

19 MS. STEWART: Your Honor, the Government
20 would prove, if this case went to trial, that Mr.
21 Dietz was 36 years old when he met a 13-year-old
22 girl at a Narcotics Anonymous meeting in Helena,
23 Montana. Mr. Dietz then searched out the girl's
24 MySpace account and requested that he be placed on
25 her friends list, which she did. Mr. Dietz then

1 began e-mailing and chatting with the girl by
2 computer and by the Internet, making comments on
3 how cute the girl was and how he wished he was 13
4 years old again and how he could get in trouble for
5 doing something with a 13-year-old girl.

6 His conversations with her turned sexual,
7 and he sent a picture of his erect penis telling
8 her to be sure to erase the picture and their chats
9 off her computer so no one would see. He used a
10 computer and a cellphone to entice that girl into
11 sexual activity, and they had sexual intercourse
12 several times in Helena, in the state and district
13 of Montana, when she was incapable of giving
14 consent due to her age. Mr. Dietz's actions
15 violated Montana Code Annotated Section 45-5-503,
16 sexual intercourse without consent. Mr. Dietz used
17 the items listed in the forfeiture count, which are
18 two notebook computers, during the commission of
19 the offenses as listed in Counts I and II of the
20 indictment.

21 THE COURT: Do you agree, Mr. Dietz, with
22 the prosecution's summary?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: You actually did those
25 things. I could ask you to tell me in your own

1 words what you did, but this has been a fairly
2 concise summary. You are telling the Court that
3 you did commit those acts?

4 THE DEFENDANT: Other than searching out
5 her MySpace account, yes. That's not true. It was
6 given to me by her, but the rest is true, yes.

7 THE COURT: I see. So she volunteered
8 her MySpace account to you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. You don't think
11 that justified your conduct, do you?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: No. All right. Let me tell
14 you about your rights, then, Mr. Dietz. You have
15 the right to persist in a plea of not guilty and to
16 be tried before a jury on the charges against you.
17 During that trial, you will be presumed to be
18 innocent. You are guaranteed the assistance of
19 counsel during that trial. You are guaranteed the
20 right to confront your accusers, that is to see and
21 to hear the witnesses who appear and testify
22 against you at that trial and to cross-examine
23 those witnesses.

24 You have the right during that trial to
25 testify or to decline to do so, because the Court

1 finds that you are a competent individual and able
2 to exercise those rights. However, you also have a
3 privilege against self-incrimination, which means
4 that you need not in any way testify or admit your
5 guilt during that trial. And, of course, if you do
6 not testify, that fact will not be held against you
7 as an inference of your guilt by the jury. You
8 also have the right to subpoena witnesses. And
9 there may be other miscellaneous rights, but all of
10 these rights will be waived by you by entry of a
11 guilty plea to the charges.

12 Now, first of all, do you understand you
13 do have these rights? Secondly, do you understand
14 that you will waive these rights by entering a
15 guilty plea?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Then, Mr. Dietz,
18 do you still want to plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Very well. The Court then
21 finds that the Defendant, first of all, is
22 competent and capable of entering an informed plea.
23 He does understand the nature of the charges
24 against him in both Counts I and II, also the
25 penalties in connection therewith.

1 The Court finds that the tendered pleas
2 of guilty are free and voluntary; further, that
3 they are supported by a factual basis as to each
4 essential element of each charged crime.
5 Therefore, Mr. Dietz, calling on you, then, to
6 plead to Count I of the indictment, what is your
7 plea?

8 THE DEFENDANT: Not guilty, Your Honor --
9 or sorry, guilty.

10 THE COURT: We better try that again.
11 You better think that over if you --

12 THE DEFENDANT: I'm sorry. Guilty.

13 THE COURT: Your plea is guilty?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Do you have
16 anything to say about that, Mr. Donahoe?

17 MR. DONAHOE: I do not, Your Honor. I
18 believe it was a slip of the tongue.

19 THE COURT: Very well. What is your
20 plea, then, to Count II?

21 THE DEFENDANT: Guilty, Your Honor.

22 THE COURT: Guilty to both counts. And
23 your plea as to the use of the computer, you can
24 plead true or not true to that charge.

25 THE DEFENDANT: True.

1 THE COURT: You did use the computers?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Very well. The Court, then,
4 accepts those pleas subject to receipt of the
5 presentence report, which the Court will order
6 forthwith, and the Court sets down sentencing for
7 August 29 at 9:30 a.m. this year in this courtroom.

8 Now, have we covered everything, Ms.
9 Stewart?

10 MS. STEWART: I believe so, yes, Your
11 Honor.

12 THE COURT: Nothing further from the
13 Government?

14 MS. STEWART: No, Your Honor. Thank
15 you.

16 THE COURT: Mr. Donahoe, anything further
17 from the Defendant?

18 MR. DONAHOE: No, Your Honor.

19 THE COURT: Very well. We'll see you,
20 then, Mr. Dietz on August 29 for sentencing, the
21 Good Lord willing. And in the meantime, the
22 probation office will be working on a presentence
23 report. You will have an opportunity to
24 participate in that report by making a statement or
25 whatever. You can discuss that with your counsel.

1 I notice that we do have an officer in the
2 courtroom here today. You could visit with him
3 about that, Mr. Donahoe. And anything further?

4 MR. DONAHOE: No, Your Honor. Thank
5 you.

6 THE COURT: Very well, then. At the
7 conclusion of the proceeding the Defendant is
8 remanded to the custody of the marshal.

9 Court is adjourned.

10 THE BAILIFF: All rise.

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12 **(Proceedings concluded at 10:30 a.m.)**

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